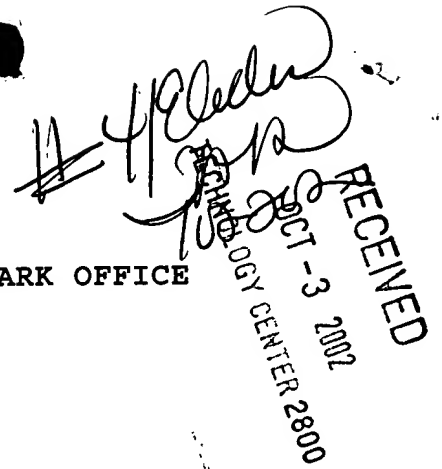




IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re Application of

KIRIL A. PANDELISEV

Serial No. 09/881,104 ✓

Art Unit: 2878

Filed: June 15, 2001 ✓

Examiner: A. Gagliardi

For: FIBER OPTIC ENHANCED SCINTILLATOR DETECTOR

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Technology Center 2600

RESPONSE

To the Commissioner of Patents and Trademarks

Sir:

In response to the Office Action dated August 30, 2002,
kindly consider the following:

Applicant provisionally elects Species 1 drawn to
scintillator apparatus and method, **with traverse**. Claims 1-66
read on the elected species.

Reconsideration and withdrawal of the election requirement
are requested.

The claims of Species 1-7 do not relate to materially
different apparatuses, products or processes. The invention
defined by Species 1 relates to the invention of Species 2-4 and
the invention, per se, described in the claims of Species 5-7.

The claims are not related to materially different processes
that would result in an apparatus used for producing different
products, nor can they be used to practice a different process
than that intended and claimed.

The inventions as described in the claims are neither independent nor distinct. In fact, the inventions as claimed arise from the same inventive effort. Where inventions are neither independent nor distinct, restrictions should not be required. Where inventions arise from the same inventive effort, restriction should not be required.

MPEP 802.01 points out that a sub-combination and a combination are not independent inventions, and that a process and an apparatus used in the practice of the process are not independent inventions. That same section points out "independent" means that there is no disclosed relationship between the subjects disclosed.

The examiner has not made any requirement based on the subject matter being independent. Therefore it is understood that the examiner concedes that the subject matter is not independent.

The examiner's requirement for restriction is based upon a holding that the subjects are distinct. That is, as pointed out in Section 802.01, the examiner has held that the subject matter as claimed:

are capable of separate manufacture, use or sale as claimed,
AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER.

The examiner has held under Section 803 that the claimed inventions:

are able to support separate patents and they are ...
distinct (MPEP Section 806.05-806.05(i)).

However, Section 803 unequivocally states:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

So that Section 803 makes its point clearly, the serious burden requirement is repeated under the title:

CRITERIA FOR RESTRICTION BETWEEN
PATENTABLY DISTINCT INVENTIONS

Section 803 goes on to state that there are two criteria for a restriction requirement: one, that the inventions must be distinct as claimed; and two, that there must be a serious burden on the examiner if restriction were not required.

Section 803 further states under GUIDELINES that an examiner must provide reasons and/or examples to support conclusions. The examiner has never stated that there would be a serious burden on the examiner if restriction were not required. Indeed, there should be no serious burden on the examiner. Therefore it is believed that no difficult search is required because the examiner is well-versed in all the classes and there is not any undue burden for the search. Therefore restriction should not be required.

In the present case the particular criteria and guidelines of 803 must be followed in that there must be a serious burden on the examiner if restriction were not required. In the present case, all of the species must be searched in all of the subclasses which the examiner has not specifically pointed out. All are properly classified and searched together, and the search for one species would not be complete without searching all of

the subclasses.

For the above reasons, Applicant believes that all the claims, 1-132, should be examined together. Hence, the Examiner should withdraw the restriction and consider all the claims together.

Reconsideration and allowance of the application are requested. Reconsideration and withdrawal of the restriction requirement are respectfully requested.

Respectfully,

A handwritten signature in cursive script, appearing to read 'JC Wray', is written over the typed name.

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September 30, 2002